[redacted]

[redacted]

[redacted]

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute and Regulations Involved	2
Statement	4
Argument	9
Conclusion	16

CITATIONS

Cases:

Girard Trust Corn Exchange Bank v. *United States*, 191 F. Supp. 551 ..... 10, 11

Hercules Powder Co. v. *United States*, 180 F. Supp. 363 15

Penn-Texas Corp. v. *United States*, decided October 3, 1962 (C. Cls.) 10, 12

United States v. *Anderson, Clayton & Co.*, 350 U.S. 55 ..... 10, 13, 14, 15

Statutes:

Internal Revenue Code of 1939: Sec. 22 (26 U.S.C. 1952 ed., Sec. 22) 2

Internal Revenue Code of 1954, Sec. 1032 (26 U.S.C. 1958 ed., Sec. 1032) 15

Miscellaneous:

H. Rep. No. 1337, 83d Cong., 2d Sess., p. A268 (3 U.S.C. Cong. & Adm. News (1954) 4017, 4410) 15

Rev. Rul. 60-328, 1960-2 Cum. Bull. 427 15

S. Rep. No. 1622, 83d Cong., 2d Sess., p. 426 (3 U.S.C. Cong. & Adm. News (1954) 4621, 5069) 15

Treasury Regulations 111, Sec. 29.22(a)-15 ..... 3, 10, 12

Treasury Regulations 118, Sec. 39.22(a)-15 4

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 521

GENERAL ELECTRIC COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. A1–A15) is reported at 299 F. 2d 942.

JURISDICTION

The judgment of the Court of Claims was entered on March 7, 1962. A petition for rehearing was denied on July 18, 1962. The petition for a writ of certiorari was filed on October 15, 1962. The jurisdiction of this Court is invoked under 28 U.S.C., section 1255(1).

QUESTION PRESENTED

During the years in question (1949–1953), the taxpayer acquired shares of its common stock, partly in liquidation of a wholly-owned subsidiary, partly as dividends in kind (declared by subsidiaries which held shares of its stock), and partly by purchase on the open market. After holding them in its treasury, it disposed of some 560,000 shares by way of additional compensation to employees for their services, by sales to affiliates which planned to use the stock for similar employee-compensation purposes, and by miscellaneous dispositions (including charitable contributions).

The question presented is whether, on the particular facts of this case, the taxpayer has received taxable gain upon the dispositions, measured by the difference between its basis for the shares and their fair market value upon disposition.

STATUTE AND REGULATIONS INVOLVED

Internal Revenue Code of 1939:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any

business carried on for gain or profit; or gains or profits and income derived from any source whatever. * * *

* * * * *

(26 U.S.C. 1952 ed., Sec. 22.)

Treasury Regulations 111 (1939 Code):

SEC. 29.22(a)–15. *Acquisition or Disposition by a Corporation of Its Own Capital Stock.*— Whether the acquisition or disposition by a corporation of shares of its own capital stock gives rise to taxable gain or deductible loss depends upon the real nature of the transaction, which is to be ascertained from all its facts and circumstances. The receipt by a corporation of the subscription price of shares of its capital stock upon their original issuance gives rise to neither taxable gain nor deductible loss, whether the subscription or issue price be in excess of, or less than, the par or stated value of such stock.

But if a corporation deals in its own shares as it might in the shares of another corporation, the resulting gain or loss is to be computed in the same manner as though the corporation were dealing in the shares of another. So also if the corporation receives its own stock as consideration upon the sale of property by it, or in satisfaction of indebtedness to it, the gain or loss resulting is to be computed in the same manner as though the payment had been made in any other property. Any gain derived from such transactions is

subject to tax, and any loss sustained is allowable as a deduction where permitted by the provisions of the Internal Revenue Code.[1]

STATEMENT

The taxpayer ("G.E.") is a New York corporation engaged primarily in the business of manufacturing and selling electrical appliances and equipment. Aside from certain authorized but unissued $10 par, 6 percent cumulative special stock, the taxpayer during the taxable years (1949 to 1953) had a capitalization of 35,000,000 shares of voting common stock of no par value, approximately 29,000,000 of which were issued and outstanding. Its common stock was listed and actively traded on the New York Stock Exchange, ranging in price from a low in 1942 of $21.50 a share to a high in 1953 of $92.25 a share. (Pet. App. A2, A15–A16, A17, A44–A45.)

In 1948, 475,800 shares of its common stock were owned by G.E. Employees Securities Corporation, a wholly-owned subsidiary organized and operated to provide a medium for the investment of savings of the taxpayer's employees. Between 1923 and 1941, the subsidiary issued debenture bonds to participating employees of G.E. and certain of its affiliates and, beginning in 1942, paid dividends to G.E. which would yield it the same rate of return on its investment as the bondholders received on theirs. (Pet.

[1] Section 39.22(a)–15 of Treasury Regulations 118 (1939 Code), applicable to the years 1952 and 1953, is identical to Section 29.22(a)–15 of Treasury Regulations 111.

App. A17–A20.) By 1948, economic conditions had so changed that Employees Securities could no longer serve its intended purpose, and a plan for its complete liquidation was adopted. Pursuant to that plan, the stock in Employees Securities held by the taxpayer was transferred to Employees Securities and cancelled, and the 475,800 shares of the taxpayer's common stock, together with other assets held by Employees Securities, were distributed to the taxpayer. (Pet. App. A2, A20–A21, A38–A39.) As this was a tax-free liquidation, stock received by the taxpayer had the same basis in its hands as in the hands of its former subsidiary. (Pet. App. A2–A3.)

Prior to 1949, G.E. had adopted a two-part plan (known as the Extra Compensation Plan until 1951, when its name was changed to Incentive Compensation Plan (Pet. App. A26)) of paying additional compensation to its executives and other supervisory personnel. Under one part of this plan, a committee of directors was authorized to make annual distributions to selected employees who had demonstrated unusual capacity—such payments, at the committee's discretion, to be wholly or partly in cash, in G.E. common stock, or in other securities. In addition, the committee was authorized to divide the annual allotments of a few top executives into two roughly equal parts, one consisting of cash immediately payable and the other consisting of an appropriate number of G.E. common shares, credited to the executive's account but actually payable (in annual installments) only upon termination of his service with the company.

In fact, substantially all awards made under the plan during the period 1936 through 1953 were paid approximately one-half in cash and one-half in the taxpayer's common stock (Pet. App. A3, A23–A27), and, during the years 1949–1953, G.E. disposed in this way of 226,558 shares of treasury stock. (Pet. App. A4, A13, A27–A28.) In addition, it made further distributions (designated as "commissions") of 4,169 shares of its treasury stock to certain of its sales managers and other employees who had performed outstanding services but who did not participate in this plan. (Pet. App. A3, A4, A27–A28.) Each of the taxpayer's employees receiving shares of stock as additional compensation was informed by letter that "the stock is your property and may be retained or disposed of according to your own judgment." (Pet. App. A3, A28–A29.) The court below found (Pet. App. A29) that insofar as it used its treasury stock for distributions under the plan, rather than cash or the stock of other corporations, G.E. had two objectives ancillary to its primary objective of paying additional compensation to its employees: first, to provide an incentive for key employees to put forth their best efforts on behalf of the company; and, second, to give these key employees a continuing stake in the future financial success of the company.

In 1948, after the liquidation of Employees Securities, the taxpayer established another plan, the G.E. Employees Savings and Stock Bonus Plan, to afford its employees a convenient means of investing their savings in U.S. Savings Bonds, Series E,

through regular payroll deductions. The bonds purchased under this plan—administered by a trust set up by the taxpayer in 1949—were deposited with the taxpayer and, after a specified holding period, were delivered to the employee together with an amount of the taxpayer's common stock equal to 15 percent of the cost of the savings bonds purchased by the employee. During the years 1949 through 1953, the taxpayer disposed of 227,647.41 shares of its treasury stock under this plan. (Pet. App. A3–A4, A30–A–33.)

Besides these distributions to its own employees, the taxpayer, during the years 1949–1953, sold 41,755 shares of treasury stock at market price to certain affiliated corporations, for use by them under their own extra compensation and stock bonus plans. (Pet. App. A4, A13, A33–A34.) During the years 1949–1953 the taxpayer distributed 54,000 shares of its treasury stock to charitable institutions, in addition to the other uses[2] it made of the stock. (Pet. App. A5, A37.) In all, the taxpayer disposed of more than 560,000 shares of common treasury stock during the period January 1, 1949, through December 31, 1953. (Pet. App. A5.)

---

[2] G.E. made the following dispositions of treasury stock in 1953: 508 shares to employees who had filed patent applications covering inventions made by them; 200 shares to selected employees as honorariums for outstanding service; 950 shares transferred in trust for children of employees who were born on the taxpayer's 75th anniversary; and 7,747 shares used to acquire certain minority interests in a Canadian subsidiary. (Pet. App A5, A35–A37.)

On January 1, 1949, G.E. held in its treasury 497,778.36 shares of its common stock, which included 475,800 shares received in the 1948 liquidation of Employees Securities, and 12,278 shares previously received as dividends in kind on its Employees Securities stock. It had purchased the remaining 9,700.36 shares on the open market. (Pet. App. A5, A39.) From January 1, 1949, to December 31, 1953, the taxpayer purchased on the open market some 332,000 additional shares of its common stock, acquired a small number (aggregating 545 shares) from the Stock Bonus trust, and received approximately 6,000 shares in the merger or liquidation of affiliated corporations. (Pet. App. A5, A39–A40.)

None of the stock which the taxpayer acquired was retired; it was held as treasury stock and carried on the corporate books as a charge to an asset account entitled "G.E. common stock reacquired." In G.E.'s reports to its stockholders and in its income tax returns, the stock was carried as an asset under the heading of "investments," with the following typical note made on its balance sheet accompanying the 1952 report to its stockholders (Pet. App. A6):

> Note 9. General Electric common stock in the portfolio was held for corporate purposes and was carried at its cost. There were 159,335 shares held on December 31, 1952, the aggregate quoted market value of which was $11,591,595.

All distributions of the taxpayer's common stock in question were made from this account. While held by the taxpayer as treasury stock, none of it had vot-

ing rights and no dividends were paid on it. (Pet. App. A6, A42–A43.)

For the years 1949–1953, the taxpayer paid income taxes on net capital gains aggregating $11,265,008.84 from the disposition of 509,537 shares of its treasury stock (*i.e.*, excluding the 54,000 shares disposed of as charitable contributions), such gains being measured by the differences between the cost or basis of the stock disposed of and its fair market value at the time of disposition. (Pet. App. A6, A13, A45–A46.) With respect to all dispositions of its treasury stock during the years 1949–1953 (with the exception of the shares sold to its affiliates and those used to acquire the minority interests in the Canadian subsidiary), the taxpayer was allowed deductions from gross income (under Section 23 of the 1939 Internal Revenue Code) based upon the market value of the stock disposed of. (Pet. App. A13, A47–A48.)

In its claims for refund, and in this action, the taxpayer unsuccessfully sought refunds for the years involved (1949–1953) on the ground that it had realized no taxable gain on the disposition of the shares in question. (Pet. App. A1–A2, A6, A14–A15, A48.)

ARGUMENT

Upon the particular facts of this case, the decision below is correct. There is no conflict of decisions or other reason for review by this Court, and the question has in any event become moot since the enactment of the Internal Revenue Code of 1954.

1. Section 29.22(a)–15 of Treasury Regulations 111, *supra*, pp. 3–4, provides, in part, that the question whether the acquisition or disposition by a corporation of its own shares gives rise to taxable gain or deductible loss depends upon the real nature of the transaction, to be ascertained from all its facts and circumstances, and that—

> if a corporation deals in its own shares as it might in the shares of another corporation, the resulting gain or loss is to be computed in the same manner as though the corporation were dealing in the shares of another.[3]

Since the Regulations are expressed in general terms, the courts have rejected attempts to resolve the question by making any one of a number of factors[4] conclusive in itself. See *Penn-Texas Corp.* v. *United*

---

[3] The taxpayer does not challenge (Pet. 8–16) the validity of this provision of the Regulations. As the court below pointed out (Pet. App. A9–A10), this Court impliedly upheld its validity in *United States* v. *Anderson, Clayton & Co.*, 350 U.S. 55, and other cases have expressly upheld it. See *Girard Trust Corn Exchange Bank* v. *United States*, 191 F. Supp. 551 (E.D. Pa.); *Penn-Texas Corp.* v. *United States* (C. Cls.), decided October 3, 1962 (Pet. App. A49–A60). See also Pet. App. A14–A15.

[4] *E.g.*, whether the corporation held the treasury shares for resale, whether the transaction is nonrecurrent, whether there was speculative trading, whether the treasury shares had voting rights and received dividends, whether they were carried on the corporation's books as an asset, and whether the corporation might have substituted authorized but unissued shares or cash (instead of the treasury shares) to accomplish the same result. Although none of these elements is conclusive in itself, nonetheless all may be important, with other factors, in swinging the balance. (See Pet. App. A53–A54.)

States, decided October 3, 1962 (62–2 U.S.T.C.), par. 9745 (Pet. App. A53–A55). Instead, the decisions have treated this as a factual issue, and have held that all the facts and circumstances of the transaction must be weighed to determine whether the shares are acquired or parted with in connection with a capital transaction, similar to a readjustment of the corporation's capital, or whether the corporation is dealing in its own shares as it might in the shares of another corporation, *i.e.*, as an ordinary asset. See *Girard Trust Corn Exchange Bank* v. *United States*, 191 F. Supp. 551 (E.D. Pa.).

In this case, the Court of Claims, upon a careful analysis of the relevant facts and circumstances, correctly concluded (Pet. App. A12–A14) that the taxpayer was dealing with its own shares in the same manner as it might deal with the shares of another corporation. In support of this conclusion, the court emphasized, among other factors, that G.E. had carried the reacquired shares on its books as an asset; that it had deducted from its taxable income the fair market value of the shares contributed to charity and paid out to employees, without regard to the cost or basis of those shares; that in the hands of the recipients the treasury shares were fully equivalent to cash or the securities of other corporations, since they were actively traded on a national exchange and since G.E. placed no restrictions on their sale; that allotments under the Extra Compensation Plan were payable either in cash or in stock at the discretion of

the committee; and that while only G.E.'s own stock could have served the purpose of giving its employees an interest in the company if they chose to retain the shares instead of selling them, all of the other purposes—to give employees a dollar value of extra compensation, to make charitable contributions, and to sell to the subsidiaries assets for use in connection with their own compensation plans—could equally well have been served by using the stock of any other corporation (Pet. App. A12–A14). In light of these considerations, the court properly decided that G.E. "was engaged in the enterprise of acquiring [its own stock] for the purpose of using it in the discharge of its obligations, in lieu of the payment of them in cash or using other stock to discharge them" (Pet. App. A12); and that it actually and regularly used the shares so acquired in lieu of cash or stock in other corporations. See *Penn-Texas Corp.* v. *United States, supra.*[8]

[8] It may be noted that in any event the realization of the gain attributable to the increase in value of the taxpayer's shares while they were held by its subsidiary (Employees Securities) should not be free of tax. Most of the gain involved in this case was attributable to increase in value during that period—since Employees Securities' cost for the stock prior to 1936 was $6,636,557.50, and at its liquidation in 1948 the aggregate market value for the shares was between $15,000,000 and $20,000,000. (Pet. App. A21.) Therefore, on the liquidation of Employees Securities, the taxpayer received value equal to the fair market value of the shares reacquired in exchange for the shares of its affiliate. See, Treasury Regulations 111, Section 29.22(a)–15, *supra.* Since the taxpayer acquired the shares in a tax-free liquidation, there would be

2. The decision below is not in conflict, as petitioners urge (Pet. 15), with the decision of this Court in *United States* v. *Anderson, Clayton & Co.*, 350 U.S. 55. In that case, a closely-held corporation, pursuant to a pre-existing contract, reacquired the stock of a decedent executive at a specially determined book value and reissued it to junior corporate officials for the purpose of maintaining a desired distribution of ownership and control among the management. The timing of the purchase and resale was dictated solely by the fortuitous circumstance of the seller's death. The government took the position that the fact that the stock was resold rather than retired and new stock issued was alone sufficient to require the recognition of taxable gain. Though the Court rejected the contention and held for the taxpayer, it did not adopt the equally restrictive "profit-motive test" proposed by the taxpayer here. On the contrary, expressly adhering to the Treasury Regulation, *supra*, it declared (350 U.S. at 60):

> * * * the applicable regulation provides that tax consequences depend upon *"the real nature of the transaction, which is to be ascertained from all its facts and circumstances,"* and not upon the sole circumstance that the stock is not retired. When *viewed in its entirety,* the instant transaction, limited to a wholly intracorporate purpose with no element of speculation

---

no recognition to it of any gain at the time it received its shares. But the recognition of that gain to the taxpayer should be postponed only until the taxpayer disposed of the shares; it should not be completely eliminated.

> or gain envisioned from dealing in its shares, does not constitute dealing by the corporation in its own shares within the meaning of the regulation. [Emphasis added.]

The "facts and circumstances" of the present case are decisively different from those in *Anderson, Clayton*. In the one case, relatively unmarketable treasury stock of a closely held corporation, acquired by prearrangement upon the death of an executive, was retransferred to other executives for the sole purpose of maintaining a particular distribution of the ownership and control of the enterprise. In this case (*i.e.*, the present case), by contrast, instantly marketable treasury stock of a large publicly held company, acquired through open market purchases and upon tax-free liquidation of a subsidiary which had held the stock for investment purposes, was annually paid out, together with cash, pursuant to a continuing program of providing extra compensation to key employees (although, as the court found (Pet. App. A-29), an ancillary objective was to give those employees a continuing stake in the future financial success of the company). These circumstances, we submit, plus the fact that the stock was carried on the corporate books as an asset and, upon distribution, was deducted from taxable income at its market price, amply justified the court's conclusion that G.E., unlike Anderson, Clayton & Co., had dealt in its own shares as it might in the shares of any other corporation.

3. In any case, the issue involved in this case has no continuing importance. As petitioner concedes (Pet. 15), the question would not arise under the 1954 Code, Section 1032 of which (26 U.S.C., 1958 ed., Sec. 1032) excludes from gross income any gain or loss resulting from an exchange of treasury stock for money or other property. See H. Rep. No. 1337, 83d Cong., 2d Sess., p. A268 (3 U.S.C. Cong. & Adm. News (1954) 4017, 4410); S. Rep. No. 1622, 83d Cong., 2d Sess., p. 426 (3 U.S.C. Cong. & Adm. News (1954) 4621, 5069). See also Pet. App. A10–A11.[6] Since the decision below is plainly correct and in any event turns upon an evaluation of the particular facts of this case, is not in conflict with any other decision, and has been mooted by Section 1032 of the 1954 Code, it does not warrant review by this Court.

---

[6] The taxpayer's other contentions fail to provide any basis for certiorari:

(1) Rev. Ruling 60-328, 1960-2 Cum. Bull. 427 (Pet. 9–10), was intended to apply only to circumstances similar to those involved in *Anderson, Clayton*, and clearly is not an expression of an administrative view that no taxable gain is realized on the quite different facts of this case.

(2) The earlier decision of the Court of Claims in *Hercules Powder Co.* v. *United States*, 180 F. Supp. 363, does not, as suggested (Pet. 10–11), reflect any real conflict with the decision in this case—although, in our view, the holding of the majority there construed the Regulations so narrowly as virtually to invalidate them.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
LOUIS F. OBERDORFER,
Assistant Attorney General.
HARRY MARSELLI,
KARL SCHMEIDLER,
Attorneys.

NOVEMBER 1962.

REPLY BRIEF FOR PETITIONER

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 6 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 521

GENERAL ELECTRIC COMPANY, *Petitioner,*

v.

THE UNITED STATES.

REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION

C. RUDOLF PETERSON
JOHN P. LIPSCOMB
1200 - 18th Street, N. W.
Washington 6, D. C.

JAMES MCCARTHY
570 Lexington Avenue
New York 22, N. Y.

Counsel for Petitioner

December 1962

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 521

GENERAL ELECTRIC COMPANY, *Petitioner,*

v.

THE UNITED STATES.

REPLY TO GOVERNMENT'S BRIEF IN OPPOSITION

---

1. The basic issue raised by the petition in this case is now well defined. It is whether or not in *United States* v. *Anderson, Clayton & Co.*, 350 U.S. 55 (1955), this Court laid down a clear-cut rule for the future guidance of the lower courts in treasury stock cases. The Government and four of the present judges of the court below say that this Court did not. Petitioner contends that this Court did, *viz.*, that a treasury stock transaction does not constitute dealing by the corporation in its own shares within the meaning of the regulation if the transaction—viewed in its entirety,

with all its facts and circumstances considered[1]—is limited to a wholly-intracorporate purpose with no element of speculation or gain envisioned. Contrary to the Government's unsupported assertion (Br. 15, n. 6), the Internal Revenue Service in Rev. Rul. 60-328, 1960-2 C.B. 427, took the same view as petitioner. This is evidenced both by the official headnote (Pet. 10) and by the revocation therein of G.C.M. 16651, XV-2 C.B. 130 (1936), in which the Service had held that taxable income resulted from the sale to employees under a stock purchase plan of stock acquired for that purpose on the open market.

The Government points to factual distinctions between this case and *Anderson, Clayton* (Br. 14) but it does not, and cannot, point to any evidence or finding by the court below that would make petitioner's transactions taxable under the profit-motive test laid down in *Anderson, Clayton.*

2. In footnote 5 on pages 12 and 13 of its brief the Government injects the argument that the parent's gain on a tax-free liquidation of a subsidiary is merely postponed for future recognition, rather than completely eliminated. In this the Government is so clearly in error that a brief reply is called for, although argument on the point would be more appropriate in a brief on the merits because it is collateral to the question whether the writ should be granted.

The Government must know that, under the scheme of the statute, the parent's gain or loss on a tax-free

[1] We agree that all the facts and circumstances must be considered, but for the basic purpose stated in the text, not against some undefined standard as to the meaning of the regulation.

liquidation (*i.e.*, the difference between its tax cost of the subsidiary's stock which it surrenders and the value of the subsidiary's assets which it receives) is not only not recognized, it is gone forever. It is not postponed for future recognition. This is true because the only way such postponement could be effected would be by transferring the parent's tax cost of the subsidiary's stock to the assets received, which is not the rule of section 113(a)(15), first sentence, of the Internal Revenue Code of 1939, 26 U.S.C. §113(a)(15) (1939), 52 Stat. 493.

3. Finally, the Government contends (Br. 15) that this case has been "mooted" because Congress in enacting section 1032 of the Internal Revenue Code of 1954 swept aside the Treasury's regulation and provided that treasury stock transactions in 1954 and later years never result in taxable gain or loss. Yet this Court granted certiorari in *United States* v. *Anderson, Clayton & Co.*, 348 U.S. 936, although the Government had pointed out on pages 12-13 of its petition for certiorari therein that section 1032 had already been enacted.

The Government does not deny that, as pointed out by petitioner (Pet. 15, n. 10), at least three substantial, similar cases are pending in the Court of Claims. It has not given this Court the benefit of its superior information as to how many other like cases are pending in the courts or at the administrative level. It is well known that returns filed for 1939 Code years are still under consideration in the Internal Revenue Service.

In any event, a lower court should not be able in even one case simply to disregard a decision of this Court. We cannot express this principle better than the Solicitor General did in his petition for certiorari filed this

term in *R. A. Riddell* v. *Monolith Portland Cement Co.*, No. 528, p. 6. After acknowledging therein that the same issue could not arise in cases involving later years because of a change in the Internal Revenue Code, he still requests certiorari on the ground that the court below refused to follow this Court's "plain teaching" and he aptly states: "Respect for the orderly processes of resolution of disputed questions of federal law requires the correction of any such marked disregard of this Court's decisions."

Respectfully submitted,

C. RUDOLF PETERSON
JOHN P. LIPSCOMB
1200 - 18th Street, N. W.
Washington 6, D. C.

JAMES MCCARTHY
570 Lexington Avenue
New York 22, N. Y.

Counsel for Petitioner

December 1962